



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1287

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35939.

The Harris County District Attorney (the "district attorney") received a request for the district attorney's files in cause numbers 94-09918, 94-09919, and 94-12406, all styled *State v. Charles John Blume*. You state that the district attorney will release items previously filed with the clerk of the criminal trial court. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. You have submitted samples of the responsive documents.¹ We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Article 20.02 of the Code of Criminal Procedure makes confidential information revealing the substance of grand jury

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

deliberations.² Further, this office has concluded that the grand jury is an extension of the judiciary for purposes of the Open Records Act. Open Records Decision Nos. 433 (1986), 411 (1984). Information held by a grand jury, therefore, is not itself subject to the Open Records Act. When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information held or collected by the agent is within the grand jury's constructive possession. Open Records Decision No. 513 (1988). Information obtained pursuant to a grand jury subpoena issued in connection with this investigation is within the grand jury's constructive possession. The information in these files subpoenaed by the grand jury is not subject to the provisions of chapter 552 of the Government Code. We have marked that information for your convenience.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.³ *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, the offenses here involve sexual assault of and sexual indecency with a child. In this instance, first page offense report information is protected from disclosure by common-law privacy. Open Records Decision No. 393 (1983). We conclude that sections 552.101 and 552.108 of the Government Code except the requested records from required public disclosure.

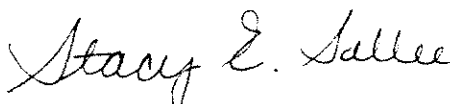
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

²We note that article 20.02 was amended in the last legislative session and now provides that grand jury proceedings are confidential. Act of May 24, 1995, 74th Leg., R.S., ch. 1011, § 2, 1995 Tex. Sess. Law Serv. 5066 (Vernon). However, the act applies only to grand jury proceedings occurring on or after September 1, 1995, the effective date of the act. *Id.* §§ 3, 4, 1995 Tex. Sess. Law Serv. at 5067. Therefore, as the grand jury proceeding at issue here occurred before the effective date of the act, we apply the old law. We do not address in this ruling what effect the amendment may have on subsequent requests for similar information.

³The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 35939

Enclosures: Marked documents

cc: Mr. Randy T. Austin
Kirton & McConkie, A P.C.
1800 Eagle Gate Tower
30 East South Temple
Salt Lake City, Utah 84111-1004
(w/o enclosures)